

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6977

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ANTHONY JOSEPH PACHECO, a/k/a Anthony Kearly,
a/k/a John Kearly, a/k/a Joseph Baca, a/k/a
Joseph Trujilliano,

Defendant - Appellant.

No. 04-7268

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ANTHONY JOSEPH PACHECO, a/k/a Anthony Kearly,
a/k/a John Kearly, a/k/a Joseph Baca, a/k/a
Joseph Trujilliano,

Defendant - Appellant.

Appeals from the United States District Court for the Eastern
District of Virginia, at Newport News. Henry Coke Morgan, Jr.,
Senior District Judge. (CR-02-23; CA-04-2)

Submitted: October 7, 2004

Decided: October 14, 2004

Before WIDENER, NIEMEYER, and WILLIAMS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Anthony Joseph Pacheco, Appellant Pro Se. William David Muhr,
Assistant United States Attorney, Norfolk, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

In these consolidated appeals, Anthony Pacheco seeks to appeal the district court's order denying his 28 U.S.C. § 2255 (2000) motion and the order denying his motion for an extension of time in which to note an appeal. We dismiss the appeal from the § 2255 motion for lack of jurisdiction because the notice of appeal was not timely filed. We also deny a certificate of appealability and dismiss the appeal from the denial of the motion for an extension of time.

When the United States or its officer or agency is a party, the notice of appeal must be filed no more than sixty days after the entry of the district court's final judgment or order, Fed. R. App. P. 4(a)(1)(B), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). This appeal period is "mandatory and jurisdictional." Browder v. Director, Dep't of Corrs., 434 U.S. 257, 264 (1978).

The district court's order dismissing Pacheco's § 2255 motion was entered on the docket on February 3, 2004. By notice of appeal postmarked June 2, 2004, Pacheco filed a notice of appeal and motion for an extension of the appeal period.* The district

*For the purpose of this appeal, we assume that the date appearing on the postmark for the notice of appeal is the earliest date it could have been properly delivered to prison officials for mailing to the court. See Fed. R. App. P. 4(c); Houston v. Lack, 487 U.S. 266 (1988).

court properly denied the motion for an extension of time. See Fed. R. App. P. 4(a)(5), (6). Accordingly, the June 2, 2004, notice of appeal was untimely filed, and we lack jurisdiction to consider the appeal.

With respect to No. 04-6977, we dismiss the appeal. With respect to No. 04-7268, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED